

Food Service Sanitation Section

PROCEDURE WARNING LETTERS TO LOCAL HEALTH DEPARTMENTS

PURPOSE

The purpose of this policy is to specify the sections' procedures governing the use of Warning Letters to local health departments (LHDs).

BACKGROUND

A Warning Letter is a written communication from the Food Service Sanitation Section notifying a LHD that MDA considers one or more practices or activities to be in violation of the Food Law of 2000, P.A. 92 of 2000; the Public Health Code, P.A. 368 of 1978, as amended, or other law, and that failure of the responsible party to take appropriate and prompt action to correct and prevent any future repeat of the violation, may result in administrative action without further notice.

PROCEDURES

When it is consistent with the public protection responsibilities of the MDA, and depending on the nature of the violation, it is the Food Service Sanitation Section's practice to afford LHDs an opportunity to voluntarily take appropriate and prompt corrective action prior to the initiation of enforcement action. Warning Letters are issued for the purpose of achieving this voluntary compliance and establishing prior notice. The use of the Warning Letter and the prior notice policy are based on the expectation that a majority of LHDs will voluntarily comply with the MPRs.

POLICY ON THE ISSUANCE OF WARNING LETTERS

Warning Letters should be issued only for serious deviations from the MPRs. The threshold for determination of what constitutes "serious" is that failure to adequately and promptly correct the deviations contained in the Warning Letter may be expected to result in MDA administrative action.

Prior to the issuance of a Warning Letter, the section should make a *documented* effort to obtain correction by communicating the violations with the responsible agency officials (see Policy "LHD Corrective Plans of Action"). If this communication with the responsible officials does not result in assurances of correction, a Warning Letter should be promptly issued to the LHD as discussed below. When a LHD fails to submit a corrective action plan within the specified time after evaluation, a Warning Letter should be issued.

FORMAT

If assurances of correction are provided from the discussion or meeting, a follow-up review should be scheduled within a reasonable time frame consistent with the noted deviations to confirm that correction of the violations has occurred (we will follow the Accreditation Program schedule unless there are exigent circumstances)¹. If during the follow-up review, the previously reported deviations continue to exist, a Warning Letter should be issued.

Warning Letters can vary in form, style, and content to provide the flexibility needed to accurately and effectively state the nature of the deficiencies encountered, and the response expected of the recipient of the Warning Letter. Nevertheless, the elements listed below are common to Warning Letters:

Titled "WARNING LETTER."

1. Issued by the section manager, division director, or higher agency official.
2. Issued to the responsible individual who, based on currently available evidence, appears to be most closely related to the violation, to that persons' superior, and to the highest known official (original of letter) in the LHD. Each person in the LHD issued a copy is identified on the Warning Letter. Generally, this will be the Chair of the Board of Health or Commissioners, the Health Officer, and the Environmental Health Director.
3. The dates of the evaluation and a description of the noncompliant condition or practice in brief, but sufficient detail to provide "prior notice" and permit the respondent to take corrective action. Citation of the section of the law or MPR violated is not required.
4. A request for correction and a written response within a specific period of time after date of receipt of the letter, usually twenty-one (21) calendar days. The recipient may be offered an opportunity to discuss the content of the letter with the evaluation officer, or when appropriate, with division management.
5. Instructions, as appropriate, that the response include (1) each step that has been or will be taken to completely correct the current deviation and to prevent the recurrence of similar deviations; (2) the time within which correction will be completed; (3) any reason why the corrective action has not been completed within the response time, and (4) any documentation necessary to show that correction has been achieved.
6. A warning statement that failure to achieve prompt correction may result in administrative action without further notice. Examples of such actions may be cited. It will not contain a commitment to take administrative action.
7. A designated MDA staff to whom the response should be addressed.
8. Delivered promptly (usually by certified mail, return receipt requested) with receipt documented.

¹ Generally, this will be 3-12 months after the approval of the corrective plan of action.

DISTRIBUTION

Warning Letters should be distributed as follows:

1. Original - Addressee(s)
2. One copy (blind) each to:
 - Food and Dairy Division Director
 - Food Service Sanitation Section Manager
 - Evaluation Officer
 - Each person identified on the Warning Letter
 - File

Acknowledgement of Response to a Warning Letter:

It is the Section's general policy that responses received to warning letters should be acknowledged with an appropriate written response.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

WARNING LETTER

*[MOST RESPONSIBLE INDIVIDUALS: CHAIR, BOARD OF HEALTH/COMMISSION;
HEALTH OFFICER; ENVIRONMENTAL HEALTH DIRECTOR
TITLE
LHD NAME
LHD'S COMPLETE ADDRESS]*

Dear [Addressee]:

Your agency's food service sanitation regulatory program was reviewed on _____, 2000 by a representative of the Michigan Department of Agriculture (MDA) as part of the Michigan Local Public Health Accreditation evaluation. Our review revealed that your agency failed to comply with certain Minimum Program Requirements (MPRs) as specified Food Law of 2000, P.A. 92 of 2000. Some of the deviations we found include the following:

[List of noncompliances appears here]

You should not consider the above deficiencies as an all-inclusive list. The specific deficiencies noted above appeared on your On-Site Review Summary, which was discussed with [_____] at the close of the review and a copy mailed to your agency. These deficiencies may be symptomatic of serious underlying problems that could compromise the quality and effectiveness of your agency's food safety regulatory program.

It is your responsibility to ensure adherence to each requirement specified Food Law of 2000, P.A. 92 of 2000. You are responsible for investigating and determining the causes of the deficiencies that the review identifies, and promptly initiating permanent corrective actions.

If your agency fails to promptly correct these deficiencies in the Minimum Program Requirements, MDA may, without further notice, initiate administrative action, including one or more of the following:

- Recommend "not accredited" status to the Michigan Local Public Health Accreditation.
- Impact your agency's Local Public Health Operations funding from the state.
- Issue an Administrative Order pursuant to § 2497 of the Public Health Code.
- Suspend or revoke an agency's delegation of the food safety regulatory program.

Within twenty-one (21) calendar days after receiving this letter, you should notify MDA in writing of:

- ☐ The specific steps you have taken to correct all of the violations noted in this letter;
- ☐ Each step your agency is taking to prevent the recurrence of similar deficiencies; and
- ☐ New policies and procedures where appropriate.

If your agency is unable to complete the corrective action within twenty-one (21) calendar days, you should state the reason for the delay and the time within which the corrections will be completed.

Please send the original copy of your response to Vito Palazzolo, Evaluation Officer, Food and Dairy Division, Michigan Department of Agriculture, P.O. Box 30017, Lansing, Michigan, 48909. If you have any questions regarding this letter or how to ensure that you are meeting the Minimum Program Requirements, please call Mr. Palazzolo at: (517) 241-0140.

Sincerely,

Example